IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.96 OF 2005

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Mr.Praful Vora ...Petitioner

v/s.

Akashdeep S. Joshi & ors. ...Respondents

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Mr.Sean Wassodew for the Petitioner.

Mr.S.S.Purohit i/b Purohit & Co. for the Respondent No.1.

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CORAM: D.K.DESHMUKH, J.

DATED: 17TH OCTOBER,2005

P.C.:

1. By this petition the Petitioner challenges the

award made by the sole arbitrator appointed by the Bombay Stock Exchange. By the award the Petitioner has been directed to pay an amount of Rs.3,59,594.39. Admitted position is that the Petitioner was the constituent of the Respondent No.1, and the Respondent No.1 was the sub-broker. The Petitioner was carrying out transaction through him. Even according to the Petitioner, transactions up to 25-11-2000 were carried on by the Respondent No.1 as per the instructions from the Petitioner. The dispute was raised only in relation to the transactions after 25-11-2000. According to the Petitioner, he had given a letter of that date to the Respondent No.1 to stop dealing on his behalf on BSE. However, according to the Petitioner, the Respondent No.1 continued to use the client code of the Petitioner for entering into the transaction on BSE, because for some reason he was not in a position to use his own code.

2. So far as this aspect of the matter is concerned, perusal of the award shows that the learned Arbitrator has gone through the letter and has, after comparing the signature on the letter, declined to believe the letter and has held that the letter is an

after thought. The finding recorded by the learned arbitrator that the letter dated 25-11-2000 relied on by the Petitioner is not a reliable document is a finding of fact, which cannot be disturbed by this court in its limited jurisdiction under Section 34 of the Arbitration & Conciliation Act.

3. It was then urged that for the purpose of calculating the period of limitation in relation to each transaction, the period will have to be counted from the date of accrual of cause of action in relation to each individual transaction. This contention, in my opinion, has no substance. Because the claim was made by the Respondent No.1 on the basis of balance which was shown at the foot of the account. In the statement of claim, there is a clear recital that the amount which was claimed was shown due from the Petitioner at the foot of the account. It was not claimed by the Petitioner that the Respondent No.1 was not maintaining current, open and mutual account of the Petitioner. In my opinion, it cannot be said that the claim made by the Respondent No.1 was barred by the law of limitation. It was contended that certain debit entries were made by the Respondent No.1 in the account of the Petitioner,

because of the transactions done in the names of wife and other relatives of the Petitioner. According to the Petitioner, those debit entries could not have been made for two reasons, firstly because according to the Petitioner the transactions of his wife and other relatives were independent transactions and secondly the claim made against the Petitioner on that account was barred by the Benami Transactions (Prohibition) Act, 1988.

4. So far as the first aspect is concerned, the award shows that the learned arbitrator has relied on an affidavit filed by the Respondent No.1, where he has stated that the Petitioner was giving him instructions for carrying on a transaction in the name of his wife and other relatives. The learned Arbitrator has also relied on some documents, where certain entries were made in Gujarathi language. The finding that the transactions in the name of wife and other relatives were entered into by the Respondent No.1 on the instructions of the Petitioner and basically they were the transactions of the Petitioner himself is a finding of fact, which can not be disturbed for following reasons. There appears to be material available on record to support

the finding. It is a finding recorded by the tribunal constituted by the trade body and therefore, the arbitrator had knowledge of the business that is carried on stock exchange and the manner in which it is carried out. In my opinion, therefore, it will not be appropriate for this court to interfere with this finding. So far as the provisions of Benemi Transactions (Prohibition) Act, 1988 are concerned, in my opinion, provisions of that Act are not attracted in this case. Once the arbitral tribunal recorded a finding that the transaction which is shown in the name of wife and other relatives of the Petitioner were actually the transactions of the Petitioner, in my opinion, there is no question of there being any Benami transaction.

4. Taking overall view of the matter, therefore, in my opinion, as the award is based mainly on the finding of fact which have been recorded by the arbitral tribunal, which is the arbitral tribunal as observed above of a trade body, it will not be appropriate to disturb the award. Petition, therefore, fails and is dismissed. No order as to costs.

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